



**MARINE FISHERIES ADVISORY COMMISSION
BUSINESS MEETING AGENDA**

8:00 AM

Thursday, August 18, 2022

Via Zoom

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Call In: 1-929-436-2866

Webinar ID: 885 2252 8111

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1. Introductions, Announcements and Review of Agenda
2. Review and Approval of the June 16, 2022 Draft Business Meeting Minutes
3. Comments
 - a. Chairman
 - b. Commissioner
 - c. Law Enforcement
 - d. Director
4. Item for Future Public Hearing
 - a. Vessel Trackers for Federal Lobster Permit Holders
 - b. Whelk Gauge Schedule Petition
 - c. Protected Species Regulatory Amendments and Clarifications
 - d. Area 1A (Gloucester/Rockport) Mobile Gear Open Season
 - e. Recreational Tautog Trophy Fish
5. Discussion Items
 - a. Updates Concerning the Atlantic States Marine Fisheries Commission
 - b. Updates Concerning Federal Fisheries Management
 - c. Protected Species Updates
 - d. Shellfish Program Updates
 - e. Recent Adjudicatory Proceedings
 - f. Quota Managed Species Update
6. Other Business
 - a. Commission Member Comments
 - b. Public Comment
7. Adjourn

Future Meeting Dates

September 13, 2022
Location TBD

October 18, 2022
Location TBD

All times provided are approximate and the meeting agenda is subject to change. The MFAC may amend the agenda at the start of the business meeting.

MARINE FISHERIES ADVISORY COMMISSION

June 16, 2022

SMAST East

836 S. Rodney French Blvd

New Bedford, MA 02744

In attendance:

Marine Fisheries Advisory Commission: Raymond Kane, Chairman; Michael Pierdinock, Vice-Chairman; Bill Doyle, Clerk; Kalil Boghdan; Shelley Edmundson; Bill Amaru; Lou Williams; and Tim Brady Absent: Arthur “Sooky” Sawyer

Division of Marine Fisheries: Daniel McKiernan, Director; Kevin Creighton, CFO; Story Reed; Jared Silva; Nichola Meserve; Melanie Griffin; Julia Kaplan; and Jeff Kennedy

Department of Fish and Game: Ron Amidon, Commissioner; Mark Reil, Director of Legislative Affairs; Jennifer Sulla, General Counsel

Massachusetts Environmental Police: Lt. Col. Pat Moran and Lt. Matt Bass

Members of the Public: Phil Coates

INTRODUCTIONS AND ANNOUNCEMENTS

Chairman Ray Kane called the June 16, 2022 Marine Fisheries Advisory Commission (MFAC) business meeting to order. He expressed excitement over meeting in person for the first time in two years.

REVIEW AND APPROVAL OF JUNE 16, 2022 DRAFT BUSINESS AGENDA

Dan McKiernan requested that the Belding Award Nomination be moved up the agenda and handled prior to “Action Items”. No objections were raised to this request.

Chairman Kane asked for a motion to approve the June 16, 2022 MFAC business agenda as amended by Director McKiernan. **Mike Pierdinock made the motion to approve the amended June 16, 2022 business meeting agenda. Tim Brady seconded the motion. The motion passed unanimously 7-0.**

REVIEW AND APPROVAL OF APRIL 7, 2022 DRAFT BUSINESS MEETING MINUTES

Chairman Kane asked for comments or edits to the April 7, 2022 MFAC draft business meeting minutes. No comments were made. Chairman Kane sought a motion to approve be moved. **Tim Brady made the motion to approve the April 7, 2022 business meeting minutes as provided. Mike Pierdinock seconded the motion. The motion passed unanimously 7-0.**

CHAIRMAN'S COMMENTS

Chairman Kane expressed his appreciation of DMF convening an in-person MFAC meeting since early 2020. He also commended DMF for their work running virtual meetings over the past two years.

COMMISSIONER'S COMMENTS

Commissioner Amidon echoed Chairman Kane. The Commissioner then discussed \$500,000 in capital funds for artificial reef enhancement and an additional \$350-400,000 allocated to upgrading DMF's office space in Gloucester and Salem.

LAW ENFORCEMENT COMMENTS

Lt. Matthew Bass provided comments for the Massachusetts Environmental Police (MEP). Lt. Bass stated trap fishermen were excited to get their gear in the water once the seasonal right whale protection closure was lifted. Regarding finfish fisheries, there had been no significant violations to date.

Jared Silva asked if MEP had encountered any issues regarding the appropriate way to measure striped bass. Lt. Bass noted the current "total length" definition was written when there was a minimum size, which allowed anglers to squeeze the forks together to get to the minimum size. Now with the slot limit, anglers were both fanning tails out to retain larger fish at the maximum size and squeezing tails to retain smaller fish at the minimum size. Lt. Bass suggested refining the definition of total length to improve enforcement and compliance. Jared Silva opined the MFAC Law Enforcement Sub-Committee should deliberate on this during the fall.

DIRECTOR'S COMMENTS

Director Dan McKiernan welcomed everyone to the meeting. The Director briefly touched on capital funding and wind energy development issues.

The menhaden limited access fishery trip limit had been reduced from 125,000 pounds to 25,000 pounds this week, as the fishery hit its quota utilization trigger. Nichola Meserve was working to secure quota transfers from other states to ensure the fishery could remain open into the summer period when local bait demand is higher. Dan stated there was interest in reducing the menhaden trip limit in future years to utilize the quota over a more prolonged period and keep the fishery open during periods when bait demand was high. Dan also noted the interstate fishery management plan may be amended to 2023 and these amendments may limit the mechanisms for small scale bait fishing to function once the state quota was utilized.

Dan McKiernan briefly discussed the state's FY23 budget and funding mechanisms. He then moved on to federal sea herring disaster funds. Congress had approved \$11.3 million in funding and he expected approximately \$3 million would be distributed to DMF

for Massachusetts fishery. However, there was some confusion about how to most effectively distribute funding throughout the region given vessels often land in multiple states. He expected this would be challenging and that the states would have to work through the ASMFC to develop a uniform approach to allocating fundings. Congress also allocated funding to the states to comply with the Atlantic Large Whale Take Reduction Plan gear modification requirements and recent ASMFC electronic vessel tracking mandates for federal lobster permit holders.

Mike Pierdinock asked how menhaden quota utilization in 2022 compared to prior years. Dan opined that it tracked similarly to prior years. DMF would provide a quota utilization presentations during late summer and early fall meetings, which would provide additional details.

BELDING AWARD NOMINATION

Dan summarized the purpose and significance of the Belding Award. He then nominated former MFAC Chairman Mark Amorello. Dan stated Mark's lifetime of work in marine fishery issues—including his time on the MFAC and NEFMC and his fish passage and restoration efforts through the Pembroke Herring Fisheries Commission—made him worthy of this distinction. Dan then sought the MFAC's support and approval of this nomination.

Chairman Kane sought a motion to approve the Director's nomination of Mark Amorello for the 2022 Belding Award. **Tim Brady made a motion to approve the recommendation from the Director. Kalil Boghdan seconded the motion. The motion was passed unanimously 7-0.**

ACTION ITEMS

2022 Recreational Fishing Limits for Black Sea Bass, Scup, and Summer Flounder

Jared Silva stated the recommended limits were adopted via an emergency regulation on April 29, 2022 and are currently in effect during the 90-day emergency period. This final action will codify these limits beyond the 90-day period, which ends on July 29. The recommended limits were:

1. *Black Sea Bass*. Adopt an open season of May 21 – September 4 with a 4-fish bag limit and 16" minimum size.
2. *Summer Flounder*. Adopt an open season of May 21 – September 29 with a 5-fish bag limit and 16.5" minimum size.
3. *Scup*. Increase the minimum size by 1" from 9" to 10" while retaining the same seasons and bag limits. For private anglers, the season is January 1 – December 31 with a 30-fish bag limit or a 150-fish vessel limit, whichever is most restrictive. For the for-hire fishery, the season is January 1 – April 30 and July 1 – December 31 with a 30-fish bag limit and a May 1 – June 30 "bonus season" with a 50-fish bag limit.

Nichola added that NOAA Fisheries had issued a final rule for federal 2022 recreational scup measures and determined not to close federal waters. This was initially proposed to further reduce MRIP-projected harvest limit because the 1" minimum size increase adopted by the coastal states did not achieve the requisite reduction. However, state directors and commissioners submitted a comment to NOAA Fisheries advocating that the federal proposal was heavy-handed when balancing impacts on recreational fisheries against conservation, particularly given the biomass of the stock and the continued underutilization of the ACL.

Mike Pierdinock thanked DMF and DFG for their contributions to comment letter to NOAA Fisheries and noted it was appreciated by the for-hire industry.

Chairman Kane sought a motion to approve the Director's to adopt final 2022 recreational fishing limits for black sea bass, scup, and summer flounder. **Mike Pierdinock made a motion to approve the recommendation. Shelley Edmundson seconded the motion. The motion was passed unanimously 7-0.**

Regarding recreational fishing limit adjustments for Georges Bank (GB) cod and Gulf of Maine (GOM) cod and GOM haddock, Jared Silva explained that there were delays in federal rulemaking. As a result, DMF was not in a position to propose complementary rules. Given the anticipated federal rule making timeline, Jared opined DMF would likely file emergency rules during the summer in response to federal filings, hold another public hearing on the subject during the late summer; and the submit final recommendations to the MFAC at an early fall meeting.

Mike Pierdinock noted the various negative consequences of the delays in federal rule making. First, anglers are foregoing an additional 5-haddock this spring and summer that they should otherwise be allowed. Second, the conservation benefits of the May – July cod closure is undermined by these delays, as the fishery remains open. As this fishery is most productive during the summer months, he was concerned these delays may result in the fishery exceeding harvest limits and NOAA Fisheries then requiring additional conservation in future years. Director McKiernan indicated DMF would draft a letter to NOAA Fisheries expressing these concerns.

ITEMS FOR FUTURE PUBLIC HEARING

Jared Silva expected DMF would host a virtual omnibus public hearing during the early fall. This hearing would address proposals presented to the MFAC at their June and August meetings. The items proposed at the June business meeting for public hearing area described herein.

Mackerel Possession Limit and Commercial Permit Endorsements

Jared discussed a proposal to establish a new regulatory section affecting Atlantic mackerel in response to the MAFMC's updated mackerel rebuilding plan. This new section would establish two specific requirements:

1. A 20-fish per person recreational possession limit for Atlantic mackerel. Exempt from this will be recreational anglers in possession of mackerel lawfully purchased from a bait dealer from which they have a receipt.
2. A commercial open entry regulated fishery permit endorsement for mackerel, which would be required to sell mackerel, as well as catch, possess, and land mackerel in quantities that exceed the recreational possession limit.

Jared explained the recreational limit for mackerel would apply similarly to the recreational limits for eel and lobster. Melanie Griffin and Dan also provided some additional background on the development of the 20-fish landing limit and how this was being coordinated between the northeaster states and the MAFMC.

Jared stated the commercial permit will not allow for a way to easily exceed the recreational limit; the part of the regulation that does not allow for mixing of commercial and recreational catch (with the one exception for bluefin tuna) would apply. Melanie added there was confusion surrounding permitting and how catch reporting will work. The MFAC asked NOAA Fisheries to enhance communication on the subject.

Ray Kane asked Melanie about incidental catch permits or restricting small boat access. Melanie stated the rebuilding plan did not address these issues.

Mike Pierdinock thanked DMF for working to avoid a recreational closure or lower bag limit. He asked about bycatch issues in the large-scale mid-water trawl fleet. Melanie stated she would have to look into the question. Ray Kane added that he was told the current TAC will not be reached this year since the mid-water trawl fleet is tied up due to impacts of the low TAC of fishery economics.

Kalil Boghdan and Melanie discussed the ongoing coordination among Maine, New Hampshire and Massachusetts. Melanie noted the majority of recreational Atlantic mackerel catch among these states occurs in state waters, unlike states to our south. She opined that the northern states would continue to coordinate towards complementary rules in states waters (e.g., 20-fish possession limit)

Bill Amaru and Mike Pierdinock asked about the federal court ruling overturning the mid-water trawl buffer zone. Melanie explained the court vacated the buffer zone established by Atlantic Herring Amendment 8 and the Department of Justice appealed the decision. While the buffer zone is not in place at this time, given low herring and mackerel quotas, Melanie questioned whether this will prompt fishing activity in the area.

Prohibition on Shortfin Mako Retention

Nichola Meserve discussed the public hearing proposal to ban retention of Atlantic shortfin mako caught in state waters. This is being proposed to comply with the Interstate Fishery Management Plan. Nichola stated the shortfin mako is not rebuilding as expected, and in order to meet the rebuilding timeline, ICCAT sought a retention prohibition while establishing a process whereby some retention could be allowed in the future subject to rebuilding progress. NOAA Fisheries had proposed and was in the

process of adopting this retention prohibition for federal waters. While Massachusetts does not have a state waters mako fishery, the rule would be adopted for regulatory consistency across jurisdictions.

Mike Pierdinock asked about the final federal rule. Nichola expected it would be promulgated in June.

Kalil asked if there was a directed shortfin mako fishery. Mike P. stated pelagic longline fisheries typically catch shortfin makos as bycatch, but offshore pelagic longline management in the US is strict and helps to offset mako bycatch. Mike added there are very few federal commercial mako permits.

DISCUSSION ITEMS

Updates Concerning the Atlantic States Marine Fisheries Commission

Striped Bass Amendment 7 was approved by the ASMFC in May. Nichola Meserve reviewed the changes to the management triggers and Board processes that will position ASMFC to respond quickly to the upcoming stock assessment and the potential for lower recruitment in the future. With regards to recreational release mortality, the ASMFC adopted two new requirements—a ban on the use of gaffs and a mandate to release of fish caught on restricted terminal tackle. Both of these requirements were previously and unilaterally implemented by DMF. The Board also placed new limits on the use of conservation equivalencies in setting recreational fishing measures. Nichola concluded by stating that at present DMF and the MFAC are not required to pursue rule making for 2023, however, this may if the upcoming stock assessment demonstrates the stock is not on track to rebuild by 2029.

Nichola then discussed fluke, scup, sea bass, and bluefish. With regards to recreational fisheries management, the ASMFC and MAFMC approved the harvest control rule. Nichola opined this was an important step for improving the interannual management of recreational fisheries by providing additional flexibility. The rule was adopted on a provisional basis and will sunset after three-years. This provides an opportunity to tweak the rule before setting is as a permanent requirement. Nichola then reviewed how this new rule would affect the setting of annual recreational catch limits.

Jared Silva asked Nichola to describe how the new approach would have affected recreational black sea bass and summer flounder limits this year were it implemented. Nichola described how black sea bass would have been subject to a 10% reduction rather than a 20% reduction, and the fluke liberalization would have been more conservative.

Dan discussed the lobster resiliency addendum. The addendum proposes increases to the LCMA1 gauge and more uniform v-notch and maximum size rules across LCMA's. Maine had pursued the development of this addendum in response to anticipated declines in the GOM stock. However, dealers have expressed concerns about how these changes may impact international commerce with Canada. Dan was uncertain the

rule would move forward at this time. However, he was considering enacting more uniform v-notch and maximum sized rules in Massachusetts regardless of the outcome of the addendum. Lt. Col Moran supported this.

Bill Amaru expressed concern that more uniform rules could create problems for Cape fishermen.

Updates Concerning Federal Fisheries Management

Melanie Griffin provided a summary of the April NEFMC meeting and an overview June NEFMC agenda. In April, the NEFMC initiated Monkfish FW13 and Groundfish FW65, approved the Atlantic scallop limited access leasing scoping document, and remanded further work on potential alternatives for a Southern New England Habitat Area of Particular Concern back to the Habitat Committee. The NEFMC is scheduled to meet in-person (with a remote option) in Portland, ME from June 28-30, 2022. It is a busy agenda with a final action on 2022-2026 Research Priorities, 2023-2024 RSA priorities for monkfish and sea scallops, and the habitat framework to designate a new HAPC in SNE. The rest of the agenda is filled with Council educational opportunities, including groundfish sector operations and the state space modeling research track, as well as various FMP and other updates. The Council will also receive a few updates on relevant regional work outside of the Council process, including the May meeting of the Atlantic Large Whale Take Reduction Team, and a draft action plan to reduce Atlantic sturgeon bycatch in federal large-mesh gillnet fisheries by 2024. Finally, the Council will have an opportunity to discuss NOAA's scoping process to consider a Hudson Canyon national marine sanctuary and what factors will contribute to determination.

Bill Amaru highlighted concerns of fishermen regarding possible new cod stock delineations and how one stock not responding to conservation measures would impact other stocks' management. Melanie stated they probably wouldn't differentiate between winter and spring spawning. Bill stated the temperature will determine the redistribution of the fish and he hopes that when the assessments are done they do not base it on past findings.

Mike Pierdinock asked if DMF will be sending a comment letter to NMFS regarding the Hudson Canyons. Dan stated that DMF could submit a letter if there is an open comment period. Mike stated he will be at the NEFMC meeting next week and he hopes it will be productive.

Vineyard Wind Innovation Panel

Dan briefed the MFAC on the Vineyard Wind Innovation Panel and thanked Shelley Edmundson and Mike Pierdinock for serving on it. He stated the panel will determine how the money from Vineyard Wind mitigation is spent and distributed.

Dan then described separate funding to enhance vessel safety and navigation within wind arrays. Dan asked Mike P. to speak to a study being conducted into high-resolution radar. Mike P. stated there are safety concerns regarding wind arrays and

radar interference, but it is diminished when certain technologies are stacked. However, this requires training and capital investments.

Dan asked if the Vineyard Wind money would be beneficial for offsetting the cost of the units and training. Mike stated there is a significant cost differential between the systems and was unsure if the funds would be sufficient. Mike reiterated that radar on larger boats are often more effective because they are situated higher above the water reducing interference.

Kali Boghdan asked about the timeline of construction for the Vineyard Wind projects. Dan stated the completion of the Vineyard Wind project is likely a year away, but the cable will be laid later this year. Dan stated that Simonetta Harrison could be added to the agenda at the next MFAC meeting to provide a full update on wind energy development.

OTHER BUSINESS

Dan had additional comments for the commission and stated the Monterey Bay Sea Watch team reached out to DMF for comments regarding red-listing certain species. Dan described the outcome of the meeting with the commission and stated that the DMF Statistics Team are currently working to respond to data requests from the Sea Watch team.

Dan stated the state of RI had reached out regarding recreational tautog management, and how they had adopted a slot limit with allowance for one trophy fish, and asked if DMF would consider following suit. Additionally, the RI fisheries commission was interested to meet with the MFAC to discuss issues of mutual concern. Dan stated DMF would be willing to entertain the management scheme and would consider a meeting date when looking at the MFAC schedule for the year.

Dan stated that DMF is planning to submit the ITP to NMFS in the coming weeks. He described the work that has gone into the permit and stated that DMF is applying for a three-year permit with the ability to renew the permit. Dan welcomed any questions.

Future Meeting Schedule

Jared discussed the proposed future meeting schedule which will now be on Tuesdays. Jared stated the commission should expect an email with potential dates next week, and asked members to send along any scheduling conflicts.

Ray Kane stated the possibility of meetings switching between in-person and virtual. Both Kali Boghdan and Mike Pierdinock stated they would like to have a meeting on the vineyard. Mike Pierdinock stated he likes the flexibility of the virtual meetings, and suggested considering moving the meeting location each month rather than always having the location in Westborough.

Dan stated DMF will look into the meeting law requirements in regards to a hybrid model.

Commission Member Comments

Shelley Edmundson expressed concern over reduced whelk landings as reported to her from industry. She recommended a meeting or adding whelk management to an MFAC future agenda. Dan stated how DMF received a petition to amend the gauge increase schedule and his expectation for a hearing on this later in the year with additional MFAC discussion.

Tim Brady stated he thought Melanie's presentation regarding cod and haddock was very informative.

Bill Doyle recommended a future agenda item regarding home rule issues.

Kalil Boghdan expressed appreciation for being back in person, yet stated his preference to continue with electronic documents rather than having stacks of print-outs for the meetings.

Ray Kane thanked the commission for their attendance, and hoped it will continue with future in-person meetings. He stated he would like to reconvene all the sub-committees in the coming months. Lt. Col Moran asked for a list of the sub-committees. Jared listed off several sub-committees and stated the striped bass and law enforcement sub-committee would be the only committees reconvening in the coming months.

PUBLIC COMMENTS

There were no public comments.

ADJOURNMENT

Chairman Ray Kane requested a motion to adjourn the June MFAC business meeting. **Tim Brady made a motion to adjourn the meeting. The motion was seconded by Mike Pierdinock. The motion was approved by unanimous consent.**

MEETING DOCUMENTS

- June 16, 2022 Business Meeting Agenda
- April 7, 2022 Draft Meeting Minutes
- Recreational Fishing Limit Recommendations
- Atlantic Mackerel Public Hearing Proposal
- Prohibition on Shortfin Mako Retention
- Belding Award Nomination Memo
- 2022 Menhaden Permit Conditions

UPCOMING MEETINGS

August 18, 2022 Via Zoom	September 13, 2022 TBD	October 18, 2022 TBD
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The Commonwealth of Massachusetts

Division of Marine Fisheries

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Lt. Governor

BETHANY A. CARD
Secretary

RONALD S. AMIDON
Commissioner

DANIEL J. MCKIERNAN
Director

MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)
FROM: Daniel J. McKiernan, Director 
DATE: August 12, 2022
SUBJECT: **Electronic Tracking of Federal Permitted Lobster Fishery**

Overview

To comply with the requirements of the Atlantic States Marine Fisheries Commission's interstate management plan's most recent addendums for American Lobster and Jonah Crab—Addendum XXIX to Amendment 3 to the Interstate Fishery Management Plan (FMP) for American Lobster and Addendum IV to the Jonah Crab FMP—the Commonwealth must enact new regulations to be effective during 2023. These regulations will require electronic cellular tracking devices on all commercial fishing vessels with a state issued Coastal or Offshore Lobster Permit and federal trap allocation. To this end, I intend to hold public hearings on this issue in the fall with final enactment before the end of the year.

Background

The Addenda establish electronic device tracking requirements for federally-permitted vessels in the American lobster and Jonah crab fisheries. The goal is to collect high-resolution spatial and temporal effort data to improve stock assessments, create effective and surgical changes to regulations to protected species (i.e. right whales) that may interact with lobster trap gears, improve marine spatial planning efforts, and enhance inspections by law enforcement in federal waters.

The Addenda require federally-permitted American lobster and Jonah crab vessel permit holders with commercial trap permits to install approved electronic tracking devices to collect fishing location data beginning in 2023. This program will be based on the success of a pilot study conducted by staff of DMF, ME DMR and RI DEM to test prototypes to determine their efficacy and utility.

The data collected through these electronic tracking devices will greatly improve the resolution of the stock assessment and refine the estimate of annual exploitation and abundance for American lobster by providing size composition data at a finer resolution than what is currently available. Also, the models used to assess the risk of entanglement risk will be enhanced with improved accuracy of fishing locations, which could have an impact on federal risk reduction requirements for the fishery.

Due to a lack of vessel monitoring systems and inconsistent reporting requirements among jurisdictions, the lobster fishery's "footprint" is among the least documented among its counterparts (e.g., scallops, multispecies groundfish, and surf clams). With a better delineation of the spatial footprint of the U.S. lobster and Jonah crab fisheries, managers will be better positioned to minimize and mitigate the impacts of other ocean uses such as aquaculture, marine protected areas, and offshore energy development on the fisheries. Furthermore, vessel tracking data will enhance the efficiency and efficacy of offshore law enforcement efforts.

The Addenda establish minimum criteria that must be met by tracking devices and vendors to be approved for use in the fishery. These include a data reporting rate (at least one ping per minute) and other technical specifications. Coupled with a new electronic Vessel Trip Report (VTR) federal reporting requirement, data on landings, effort and fishing location will be more comprehensive.

Thanks to congressional funding provided through ASMFC, states will be providing financial support (i.e. grants) to permit holders to pay for these devices for the first few years. DMF is in the process of securing the funds through the Commission and we intend to commence the program in the late summer/fall of 2022 with a goal of installing trackers in 2023. To execute the program, we anticipate the need to hire a full-time employee to assist the fishermen with securing funds, trouble-shooting installation and operations and managing the data.

ASMFC will be posting a Request For Response (RFP) to get cost estimates of the units from various companies. It is DMF's intent to determine a cost estimate for the purchase of the hardware and a multi-year data service plan and provide financial assistance to eligible permit holders. We estimate that about 300 Massachusetts permit holders who hold federal permits will be required to install the trackers, and all those permit holders will be eligible for the financial assistance.



The Commonwealth of Massachusetts

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RONALD S. AMIDON
Commissioner

DANIEL J. MCKIERNAN
Director

MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)
FROM: Daniel J. McKiernan, Director 
DATE: August 12, 2022
SUBJECT: **Petition to Adjust Schedule to Increase Whelk Gauge Width**

Overview

I plan to take to public hearing a petition to adjust the schedule to increase the whelk gauge size so that they occur every third-year rather than every other year. I shared this petition with you earlier this spring and indicated my intent to bring it out to public hearing this fall for a potential rule change prior to April 15, 2023—the start of next year’s conch pot fishery and the effective date of the next pending gauge increase.

Background

For more than a decade, DMF has been concerned about the status of the state’s whelk resource, particularly channeled whelk. These concerns were driven by a rapid escalation of catch and effort in the pot fishery during the early 2000s and 2010s (likely in response to declining inshore lobster resource south and west of Cape Cod); life-history traits making the resource prone to becoming overfished; and fishery dependent data (e.g., reduced catch per unit effort and truncation of catch around minimum size) indicating localized depletion was occurring.

In response, DMF initiated two size-at-maturity studies (2011 and 2015). The studies found that in Nantucket Sound—the principal harvest area—female whelks began to reach sexual maturity at a shell width of approximately 3 5/8” and reached 50% maturity at a shell width of about 3 7/8”. Size-at-maturity data was similar, albeit with animals reaching maturity slightly smaller shell width, in other important harvest areas (i.e., Buzzards Bay and Vineyard Sound). Moreover, the existing minimum size management program did not protect any sexually mature female whelks. Then in 2019, DMF completed a stock assessment for channeled whelks in Nantucket Sound, which found the whelk resource to be overfished with overfishing occurring.

As a result of this scientific work, DMF and the MFAC implemented changes to the state’s minimum size management program. Most recently, in 2019, new regulations were implemented to increase the whelk gauge width by 1/8” every other year until 2029 resulting in a terminal gauge size of 3 5/8” (Table 1). The 3 5/8” terminal gauge width corresponds to a 3 7/8” shell width, the size that DMF’s study found 50% of female whelks to be sexually mature.

As catch had truncated around the minimum size and these animals are slow growing, large increases to the minimum size would have severe economic impacts on this important inshore fishery. Therefore, any immediate increases to bring size-at-harvest to a level where it would protect any female spawning stock would produce substantial economic impacts. Accordingly, DMF opted for a gradual approach to increasing the size-at-harvest and recommended a ten-year schedule with biennial 1/8" increases to allow for a recoupment of some harvest between gauge increases.

Table 1. Schedule for Whelk Gauge Increases, Corresponding Shell Widths at 50% Retention, and Percentage of Mature Female Whelks at Shell						
	2019	2021	2023	2025	2027	2029
Chute Gauge Width	3"	3 1/8"	3 1/4"	3 3/8"	3 1/2"	3 5/8"
Shell Width at 50% Legal	3 3/16"	3 5/16"	3 7/16"	3 5/8"	3 3/4"	3 7/8"
Percent Female Size at Maturity	0%	0%	0%	5%	20%	50%

This past spring, DMF received a petition from the Massachusetts Conch Association, who represent members of the inshore conch pot fishery for channeled whelks and wholesale seafood dealers who process whelks. The petitioners argue the fishery is experiencing severe declines in landings and participation that coincide with the current gauge width schedule and are concerned that the continued decay of this fishery may result in the loss of shoreside infrastructure necessary to support it moving forward. To offset this economic impact, the petitioners seek to add an additional year between gauge width increases (Table 2). They also argue this change would provide for additional time to study various environmental and biological factors that may be impacting the whelk resource and improve fishery management.

Table 2. Comparison of Current and Proposed Gauge Schedules and Percent of Mature Females at Gauge Size					
Current Schedule	2021 – 2022 3 1/8"	2023 – 2024 3 1/4"	2025 – 2026 3 3/8"	2027-2028 3 1/2"	2029 3 5/8"
Proposed Schedule	2021 – 2023 3 1/8"	2024 – 2026 3 1/4"	2027 – 2029 3 3/8"	2030-2032 3 1/2"	2033 3 5/8"
Percent Size at Maturity	0%	0%	5%	20%	50%

Ultimately, DMF's whelk gauge size management approach was designed to be gradual to offset potential economic impacts. Consistent with that, I do not object to taking this petition out to public hearing for public comments. The petitioned change will delay milestones for protected female spawning stock. However, I think it is appropriate to consider the impacts of such delays against the concerns about the long-term viability of the fishery and claims that shoreside infrastructure is at risk.



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DANIEL J. MCKIERNAN
Director

MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)
FROM: Daniel J. McKiernan, Director 
DATE: August 12, 2022
SUBJECT: **Protected Species Regulatory Amendments and Clarifications**

Over the course of 2021 and 2022, DMF enacted a series of regulatory changes affecting fixed gear fisheries and their interactions with protected species. These changes were proposed to reduce the risk of entanglement posed by vertical buoy lines to protected species, particularly the endangered right whale, and to better identify Massachusetts gear should an entanglement occur. These changes were components of the agency's Habitat Conservation Plan for its Incidental Take Permit application for the Massachusetts Mixed Species Trap Fishery.

With these regulations now having been in place for one season, and NOAA Fisheries listing Massachusetts trap fisheries separately as its own Mixed Species Trap Fishery on the 2022 List of Fisheries (under the authority of the marine Mammal Protection Act), there are several minor modifications that are worthwhile considering for 2023. Accordingly, I plan to take a series of regulatory amendments and housekeeping clarifications to public hearing. In the sections below, I address the more substantive proposed amendments and summarize the housekeeping changes.

Weak Links on Trap Gear

Historically, the Atlantic Large Whale Take Reduction Plan (ALWTRP) and DMF regulations have required trap fishermen fish a weak link where the buoy meets the buoy line. The weak link is a mechanism designed to separate the buoy from the buoy line when exposed to 600 pounds of tension. Should an entanglement occur, the line would then break free from the buoy potentially disentangling the whale.

In 2021, DMF began to require state-waters commercial trap fishermen to fish weak rope (1,700-pound breaking strength) or rig their buoy lines with approved weak contrivances every 60°. For 2022, the ALWTRP was amended to adopt similar weak rope and weak contrivance rules for the lobster and crab trap fishery occurring in adjacent federal waters and state waters jurisdictions. However, when the new federal rules were implemented, the weak link requirement was rescinded from the ALWTRP.

This was done because of a lack of evidence in the entanglement record that these links were working as intended and that entanglements were occurring in a manner that the weak link could

be effective. Buoy line entanglements almost always occur when a portion of the buoy line wraps around the whale's body, appendage, or becomes lodged in the baleen. The terminus of the buoy line where the buoy is attached with the weak link is not typically involved in observed entanglements.

This sequencing of rule-making resulted in Massachusetts maintaining the remanent weak link requirement for 2022. For the start of the 2023 season, I want to eliminate this requirement for the commercial Massachusetts Mixed Species Trap Fishery. Weak link requirements will remain in effect for recreational lobster and edible crab fishery, as weak rope and contrivances are not required for this sector. Additionally, the weak link rules for the gillnet fishery will remain status quo, but may be amended in response to potential future changes to the management of gillnets under the ALWTRP.

Recreational Lobster and Edible Crab Season

In 2021, DMF implemented a November 1 – May 15 closed season for recreational lobster and crab trap gear. Unlike the commercial trap gear (and gillnet gear) closure, the regulation does not delineate the Director's authority to extend or rescind the recreational closure in response to the presence or absence of whales.

This potential deficiency came to light this past season, as DMF was analyzing the potential need to extend fixed gear closures past May 15 in the event right whales remain aggregated in state waters on or after that date. If DMF had to extend the commercial fixed gear closures in 2022 past May 15, it would not have been able to apply the same extension to the recreational lobster fishery without filing an emergency regulation. Accordingly, I am proposing to amend the regulations to have the recreational closure subject to the same extension and rescission criteria as the other regulated fixed gears. This will ensure that future actions to adjust the start of the open season apply uniformly to all affected fixed gear fisheries.

Buoy Line Definition and Frequency of Weak Contrivances

At present, DMF defines the term "buoy line" as the "line that extends through the water column from the buoy at the surface to a single trap on the ocean floor or to a groundline that connects multiple traps on a trawl and extends no more than 12' from the first trap on the trawl." This was done to ensure buoy line modification rules did not apply to that small segment of groundline leading off the ends of a trawl. For similar reasons, DMF also defined a 1,700 pound buoy line as having "one 1,700 pound contrivance per every 60 feet of buoy line in the top 75% of the buoy line."

Over the course of 2022, DMF has worked with MEP to audit numerous buoy lines for compliance with the weak rope rule. This redundancy has complicated how to inspect and enforce this buoy line rule, as one must account for what part of the buoy line extending from the first gangion in the groundline and then determine the part of the buoy line subject to the weak contrivance rule. Based on comments from staff and MEP, I am proposing to simplify how to address this convention and prefer to adopt a standard definition for buoy line that would accommodate it and eliminate the redundant language in the weak contrivance rule.

Housekeeping

There are also several housekeeping changes that should be proposed. This includes: (1) moving the buoy line marking rules for gillnets and traps from the gear section at 322 CMR 4.00 to the protected species section at 322 CMR 12.00 and eliminating all outdated requirements; (2) moving the recreational trap gear closure from regulation of catch section at 322 CMR 6.00 to the protected species section at 322 CMR 12.00; and (3) reorganizing the sections of the protected species regulations at 322 CMR 12.00 to enhance clarity and improve compliance.



The Commonwealth of Massachusetts

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Commissioner

DANIEL J. MCKIERNAN
Director

MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)

FROM: Daniel J. McKiernan, Director

DATE: August 12, 2022

SUBJECT: **Mobile Gear Area 1A Open Season Extension**

Overview

I plan to take to public hearing a proposal to extend the season whereby vessels can fish within mobile gear Area 1A – Gloucester/Rockport (Figure 1). Current regulations open this area to mobile gear fishing from February 1 – March 31, whereas the proposal would keep the area open through May 15. Given overarching groundfish mortality closures, this extension would principally accommodate sea scallop dredge fishing, should there be an abundant set in the area.

Background

Dating back to 1931, mobile gear fishing has been prohibited in nearshore state waters (approximately the 3-mile line) from Winthrop to the New Hampshire maritime border. This closure was first implemented by the legislature to prevent gear conflicts between trap fishermen and mobile gear fishermen, effectively allocating the inshore waters to the trap fishery. Then in the 1960s and 1970s, when regulatory authority was given over to DMF and the MFAC, the closure was maintained. However, throughout the 1970s, several exemptions were carved out to accommodate mobile gear fishing at times and places where lobster fishing activity was more limited. This includes the 1978 opening of Area 1A from February 1 – March 31.

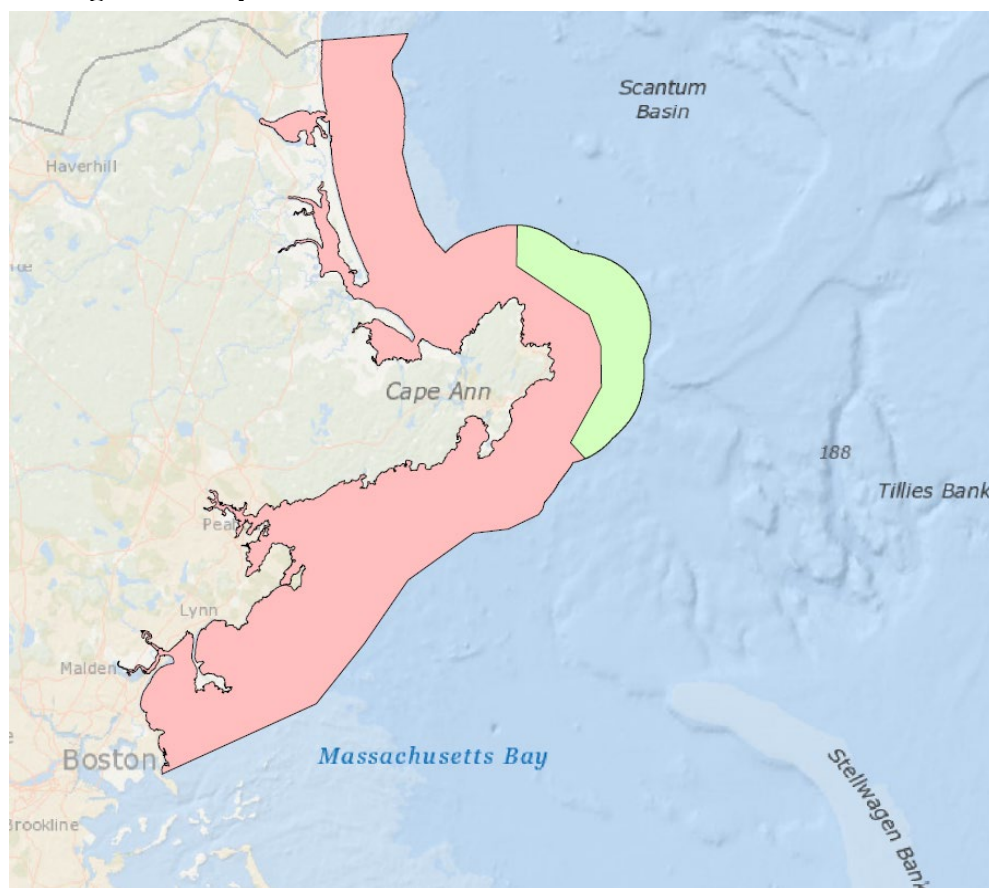
As of 2021, DMF and the MFAC closed trap gear fishing in state waters off Cape Ann from February 1 – May 15. While DMF may rescind the closure before May 15, should seasonal aggregations of endangered right whales diminish, it typically takes several weeks for trap densities to increase. As such, there is limited opportunity for gear conflicts should mobile gear fishing be allowed to continue in Area 1A through April and into mid-May.

Based on anecdotal reports from industry, there have been several years (including 2022) when there were commercially viable sets of sea scallops within Area 1A. The March 31 mobile gear closure date restricts scallop dredge gear access to such areas of exploitable scallop biomass. This particularly impacts state-waters only boats, who cannot move into adjacent federal waters and continue to fish for sea scallops.

For these reasons, I am moving forward a proposal to amend the Area 1A open season for mobile gear from February 1 – March 31 to February 1 – May 15. This should provide mobile gear fishermen, particularly those who may only fish for sea scallops in state waters, with additional opportunities to pursue the resource should it be commercially viable. Additionally, given the timing of the state’s protected species fixed gear closures, I do not expect this activity to produce gear conflicts with the lobster fleet. It is notable that sizeable scallop sets could draw in effort from federal scallop permit holders who also hold a “Coastal Access Permit—North Shore”, which authorizes the towing of mobile gear in this exempted area of state waters.

I do not anticipate this action will result in a substantial increase to state waters groundfish fishing effort. There are only a handful of draggers who actively fish in state waters for groundfish. Additionally, there are overlapping groundfish mortality closures that restrict trawl gear in the area during mid-to-late April and throughout all of May. This includes the April 15 – April 30 groundfish closure in all state waters north of Plymouth and the May 1 – May 31 groundfish closure in all state waters north of Boston.

Figure 1. Map of North Shore Mobile Gear Closure and Area 1A



Year-Round North Shore Mobile Gear Closure 

Area 1A 



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MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)

FROM: Daniel J. McKiernan, Director

DATE: August 12, 2022

SUBJECT: **Recreational Tautog Trophy Fish**

Overview

I plan to take to public hearing a proposal to establish a recreational slot limit for tautog with a trophy fish allowance. This would maintain the current 16" minimum size and establish that an angler may only allowed to retain one tautog per day that exceeds 23" total length.

Background

Tautog is managed by the Atlantic States Marine Fisheries Commission. Given the life history of the animal, the FMP manages the resource based on discrete geo-political regions, with Massachusetts and Rhode Island comprising a single management region (MARI). Accordingly, Rhode Island DEM and Massachusetts DMF work cooperatively to develop and implement compatible management programs across the state jurisdictions. Aiming to achieve a single set of rules across jurisdictions enhances compliance and enforcement and optimizes conservation.

Last year, Rhode Island DEM received a petition from its recreational fishery to adopt a maximum size for the recreational harvest of tautog but allow anglers to retain one trophy fish (>23") per angler per day. For 2022, Rhode Island established a new regulation adopting this trophy fish rule.

My colleagues in Rhode Island consulted me on their implementation of this slot limit and trophy fish allowance. While the timing last year did not allow for DMF to consider a complementary measure for this year, I am interested in considering it now for next year. I view the proposal as having two potential benefits to Massachusetts. First, it will prevent anglers from entering Massachusetts jurisdiction to retain larger fish that are non-compliant with Rhode Island regulations. Second, it will provide some additional conservation by requiring larger mature fish be released alive, while still allowing anglers to retain one large fish should they catch multiples.